

20E 12W

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

ATTY.'S DOCKET: CHAO=10A

In re Application of:)	Art Unit: 1649
)	
Moses CHAO et al.)	Examiner: R. C. Hayes
)	
Appln. No.: 09/982,095)	Washington, D.C.
)	
Date Filed: October 19, 2001)	Confirmation No. 6779
)	
For: METHOD FOR SCREENING)	March 28, 2006
MOLECULES THAT EXERT A...)	

PETITION TO VACATE HOLDING OF ABANDONMENT¹

Honorable Commissioner for Patents
U.S. Patent and Trademark Office
Customer Service Window
Randolph Building, Mail Stop
401 Dulany Street
Alexandria, VA 22314

Sir:

Applicant is in receipt of the Notice of Abandonment, mailed March 22, 2006, which states that the application is abandoned because of applicant's failure to file an RCE within the time period established by the Office Action mailed August 29, 2005. The examiner indicates that while the fee for RCE was received on January 31, 2006, the paperwork appears to be lost.

¹ If a fee must be charged, please charge same to Deposit Account No. 02-4035, and then refund said fee as the holding of abandonment is erroneous and is entirely the fault of the PTO.

It is respectfully requested that such Notice of Abandonment be vacated and that the present application be reinstated.

THE FACTS

Applicant timely and properly responded within the time period established by the Office Action dated August 29, 2005, by timely filing an RCE on January 30, 2006 (January 29th fell on a Sunday), with a two month extension of time.

As evidence that such RCE was timely and properly filed on January 30, 2006, attached hereto is a xerographic copy of the return postcard date-stamped by the PTO Mail Room as having been timely received by the PTO on January 30, 2006.

As it appears that the RCE filed on January 30, 2006, has been lost by the PTO, attached hereto is a duplicate copy of the RCE dated January 30, 2006, freshly re-signed. **No further fees are required at this time.**

REMARKS

In view of the above evidence, it is clear that an RCE was timely and properly filed within the time period established by the Office Action mailed on August 29, 2005, and that the Notice of Abandonment has been issued in error. Indeed, the postcard by itself should be sufficient, as MPEP Section 503 states:

In re Appln. No. 09/982,095

Page 3

Petition to Vacate Erroneous Abandonment of March 22, 2006

A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt of the PTO of all items listed there on the date stamped thereon by the PTO.

It is accordingly requested that the Notice of Abandonment be vacated and the present application be reinstated.

BROWDY AND NEIMARK, P.L.L.C.
Attorneys for Applicant

By 

Allen C. Yun

Registration No. 37,971

ACY:pp

Telephone No.: (202) 628-5197

Facsimile No.: (202) 737-3528

G:\BN\N\nyum\chao10A\pto\patent erroneous abandonment.doc



BN/SB/30

Request For Continued Examination (RCE) Transmittal

Address to:
Mail Stop RCE
Commissioner for Patents
Randolph Building, 401 Dulany Street
Alexandria, Virginia 22314

Application Number	09/982,095
Filing Date	October 19, 2001
First Named Inventor	CHAO et al.
Confirmation No.	6779
Art Unit	1649
Examiner Name	R. C. Hayes
Attorney Docket Number	CHAO=10A

This is a Request for Continued Examination (RCE) under 37 C.F.R. § 1.114 of the above-identified application.

Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application. See Instruction Sheet for RCEs (not to be submitted to USPTO) on page 2.

1. **Submission required under 37 C.F.R. 1.114** Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).

- a. ☒ Previously submitted. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.
- i. ☐ Consider the arguments in the Appeal Brief or Reply Brief previously filed on _____
- ii. ☐ Other _____
- b. ☐ Enclosed
- i. ☐ Amendment/Reply
- ii. ☐ Affidavit(s)/Declaration(s)
- iii. ☐ Information Disclosure Statement (IDS)
- iv. ☐ Other _____

2. Miscellaneous

- a. ☐ Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of _____ months. (Period of suspension shall not exceed 3 months; Fee under 37 CFR 1.17(i) required).
- b. ☐ Other _____

3. Fees

- The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when RCE is filed.
- ☐ Applicant(s) claim small entity status. See 37 C.F.R. §1.27.
- a. ☒ The director is hereby authorized to charge the following fees, or credit any overpayments, to Deposit Account No. 02-4035
- i. ☒ RCE fee required under 37 CFR 1.17(e)
- ii. ☒ Extension of time fee (37 CFR. 1.136 and 1.17): \$225.00 for 2 months
(☐ \$_____ already paid for _____ month(s) extension of time on _____)
- iii. ☐ Other _____
- b. ☐ Check in the amount of \$ _____ enclosed (Check No. _____)
- c. ☒ Payment by credit card (Form PTO-2038 enclosed) authorized in the amount of \$ 620.00

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

4. ☒ Provisional extension of time if needed. Applicants authorize any charge of additional fees (except issue fee) that may be required in connection with this application to Deposit Account No. 02-4035.

SIGNATURE OF APPLICANT, ATTORNEY, AGENT REQUIRED

Name (Print/Type)	Allen C. Yun	Registration No. (Attorney/Agent)	37,971
Signature		Date	January 30, 2006

CERTIFICATE OF MAILING OR TRANSMISSION

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, or facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.

Name (Print/Type)		Registration No. (Attorney/Agent)	
Signature		Date	

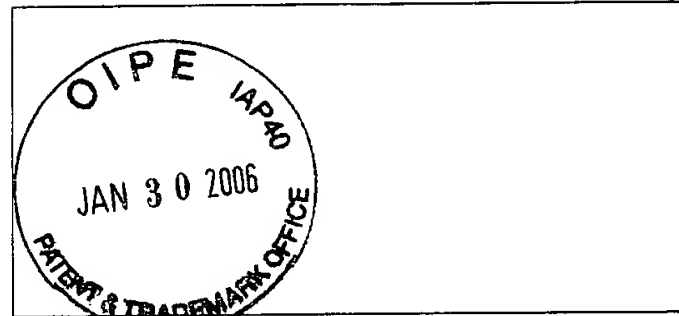


APPLICATION/PATENT NO: 09/982,095
DOCKET NO: CHAO 10A

CONF. NO.: 6779
CLIENT CODE: NYAM

THE PATENT AND TRADEMARK OFFICE STAMP
HEREON ACKNOWLEDGES RECEIPT OF THE
FOLLOWING PAPERS:

- ☒ FEES \$ 600.00 PTO FORM 2038
☒ EXTENSION OF TIME (2 MONTHS)
☐ TRANSMITTAL LETTER
☐ MISSING PARTS RESPONSE WITH DECL
☐ AMENDMENT/RESPONSE (circle one)
 ☐ PRELIMINARY ☐ SUPPLEMENTAL
☐ APPLICATION DATA SHEET
☐ RESTRICTION/ELECTION REPLY
☐ SEQUENCE LISTING ☐ WITH DISK
☒ RCE TRANSMITTAL
☐ REQUEST FOR STATUS
☐ NOTICE OF APPEAL
☐ APPEAL BRIEF/REPLY BRIEF (TRIPLICATE)
☐ REQUEST & CERTIFICATE OF CORRECTION
☐ OTHER _____



- ☐ ASSIGNMENT
☐ INFORMATION DISCLOSURE STATEMENT
 ☐ FORM SB08A & _____ PATENTS/PUBS
☐ PRIORITY DOCUMENT(S) NO. _____
☐ DECLARATION UNDER § _____
☐ _____ SHEETS OF FORMAL DRAWINGS
☐ ISSUE FEE TRANSMITTAL FORM
 ☐ PUBLICATION FEE
☐ MAINTENANCE FEE LETTER